

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TIMOTHY HOWARD JOHNSON,	Case No. 3:92-cv-00372-MMD-WGC
Petitioner,	ORDER
v.	
SHERMAN HATCHER, et al.,	
Respondents.	

On June 16, 2017, this court directed petitioner Timothy Howard Johnson to show cause and file any proof he has to demonstrate that his *pro se* motion to reopen his federal habeas case is not actually an attempt to pursue a second and successive petition challenging the same judgment of conviction (ECF No. 58). See 28 U.S.C. § 2244(3)(A).

As the court previously observed, Federal Rule of Civil Procedure 60(b) applies to habeas proceedings, but only in conformity with Antiterrorism and Effective Death Penalty Act (AEDPA), including the limits on successive federal petitions set forth at 28 U.S.C. § 2244(b). *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005). A purported Rule 60(b) motion that challenges the substance of the court’s resolution of a claim on the merits is not a proper Rule 60(b) motion but in fact a second and successive petition.

In Johnson’s response to the show-cause order, he re-asserts the vague arguments in his Rule 60(b) motion (see ECF No. 60). Thus, it still appears to this court that Johnson is not attacking any defect in the federal habeas proceedings; instead it appears that he actually seeks to file a second and successive petition challenging the same judgment of conviction. He does not assert, nor offer any proof, that he has obtained

1 leave of the Ninth Circuit Court of Appeals to pursue a second and successive petition.
2 Accordingly, Johnson's motion shall be denied.

3 It is therefore ordered that petitioner's motion to reopen case (ECF No. 55) is
4 denied as set forth in this order.

5 It is further ordered that petitioner's motion to void the judgment (ECF No. 57) is
6 denied.

7 It is further ordered that petitioner's motion for appointment of counsel (ECF No.
8 56) and motion to extend prison copywork limit (ECF No. 59) are both denied as moot.

9 It is further ordered that a certificate of appealability is denied.

10 DATED this 22nd day of August 2017.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE